

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8483 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil  
Judge? No

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SENDHABHAI SOMABHAI PATEL

Versus

STATE OF GUJARAT

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Appearance:

Shri A.S.Vakil, Advocate, for Shri S.B.Vakil,  
Advocate, for the Petitioners.

Shri M.R.Anand, Government Pleader (Senior Counsel)  
with Shri T.H.Sompura, Assistant Government Pleader,  
for the Respondents.

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 24/04/96

The order passed by the Competent Authority at Ahmedabad (respondent No.3 herein) on 28th February 1984 under section 8 (4) of the Urban Land (Ceiling & Regulation) Act, 1976 (the Ceiling Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No.2 herein) on 23rd December 1988 in Appeal No.Ahmedabad-1381 of 1984 is under challenge in this petition under Articles 226 and 227 of the Constitution of India. By his impugned order, respondent No.3 declared the holding of the petitioners to be in excess of the ceiling limit by 6082 square metres.

2. The facts giving rise to this petition move in a narrow compass. Petitioner No.1 appears to have filed his declaration in the prescribed form under section 6(1) of the Ceiling Act with respect to the holding of the family within the urban agglomeration of Ahmedabad. That holding consisted of one parcel of land bearing Survey No.375 admeasuring 6082 square metres situated at Vejalpur within the urban agglomeration of Ahmedabad (the disputed land for convenience). It appears that an application was made under section 21 of the Ceiling Act on 5th February 1979 for permission to retain the disputed land. The declaration under section 6 (1) of the Ceiling Act was processed by respondent No.3. After observing necessary formalities under section 8 thereof, by his order passed under sub-section (4) thereof on 28th February 1984, respondent No.3 declared the holding of the declarant to be in excess of the ceiling limit by 6082 square metres. Its copy is at Annexure-B to this petition. That aggrieved the petitioners herein. They carried the matter in appeal before respondent No.2 under section 33 of the Ceiling Act. It came to be registered as Appeal No.Ahmedabad-1381 of 1984. During the pendency of the aforesaid appeal, the fate of the application under section 21 (1) of the Ceiling Act came to be decided by respondent No.3 by the order passed on 21st January 1985. Thereby it came to be rejected. Its copy is at Annexure-D to this petition. The aggrieved petitioners carried the matter in revision before the State Government (respondent No.1 herein) under section 34 of the Ceiling Act. During the pendency of the aforesaid revisional proceeding before respondent No.1 herein, by the order passed on 23rd December 1988 in Appeal No.Ahmedabad-1381 of 1984, respondent No.2 dismissed it. Its copy is at Annexure-A to this petition. Thereafter, by the order passed on 25th April 1990, respondent No.1 accepted the revisional application

and set aside the order at Annexure-D to this petition and remanded the matter to respondent No.3 for deciding afresh the fate of the application under section 21 (1) of the Ceiling Act with respect to the disputed land. Its copy is at Annexure-E to this petition. In the meantime, the notification under section 10 (1) of the Ceiling Act with respect to the land declared surplus under the order at Annexure-B to this petition was issued on 18th August 1984. Its copy is at Annexure B-1 to this petition. After disposal of the appeal by the order at Annexure-A to this petition, the notification under section 10 (3) of the Ceiling Act came to be issued on 28th February/19th May 1989. Its copy is at Annexure B-2 to this petition. It was followed by the notice under section 10 (5) of the Act issued on 15th June 1990. Its copy is at Annexure B-3 to this petition. The petitioners have thereupon approached this court by means of this petition under Articles 226 and 227 of the Constitution of India for questioning the correctness of the order at Annexure-B to this petition as affirmed in appeal by the appellate order at Annexure-A to this petition. It appears that, pursuant to the order at Annexure-E to this petition, respondent No.3 decided the fate of the application under section 21 (1) of the Ceiling Act afresh by his order passed on 18th July 1995. That application came to be rejected thereby. The petitioners have carried the matter in appeal before respondent No.2 under section 33 of the Ceiling Act. It has come to be registered as Appeal No.Ahmedabad-100 of 1995. It is pending for hearing before respondent No.2.

3. It is not in dispute that the disputed land originally belonged to the father of the petitioners herein. It may be clarified that petitioner No.1 is the brother of petitioner No.2. Their father left for his heavenly abode some time after 1972 but before coming into force of the Ceiling Act. On the date of coming into force of the Ceiling Act, he was no longer alive. The exact date of his death is not available. A copy of the declaration filed by petitioner No.1 under section 6 (1) of the Act is at Annexure-C to this petition. It has been mentioned therein that the father of the petitioners had executed one banakhat with respect to the disputed land in favour of one R.V.Patel on 19th August 1972 and thereafter he breathed his last. This fact is taken note of for the purpose of ascertaining whether or not the Hindu Succession Act, 1956 (the Succession Act for brief) would govern the case of succession to his property. Since he has died after 1972, succession to his property would certainly be governed by the Succession Act. He was survived by his widow and the petitioners as his

heirs and legal representatives figuring in Class I in the Schedule appended thereto. They will succeed to the property left behind by the deceased in equal share as provided therein. By virtue of section 19 thereof, they will get their shares as co-tenants and not as joint tenants. It would mean that they become co-owners of the property left behind by their predecessor-in-title. The petitioners and their mother have therefore equal share in the disputed land. All of them were found to be major on the date of coming into force of the Ceiling Act. Each would therefore be entitled to a separate ceiling unit for the purposes of the Ceiling Act. I am therefore of the opinion that the petitioners are entitled to in all three units for the purposes of the Ceiling Act.

4. The authorities below have not granted to them separate units by treating them as an association of individuals. That view is contrary to the binding Division Bench ruling of this Court in the case of CHHAGANLAL TRIKAMDAS THAKKAR v. COMPETENT AUTHORITY, RAJKOT reported in 1994 (1) Gujarat Current Decision at page 1. In that view of the matter, the impugned orders cannot be sustained in law on that ground alone.

5. The impugned notification under section 10 (3) of the Ceiling Act at Annexure B-2 to this petition and the impugned notice under section 10 (5) thereof at Annexure B-3 to this petition have been issued during the pendency of the application under section 21 (1) of the Ceiling Act with respect to the disputed land. This could not have been done in view of the binding Division Bench ruling of this Court in the case of SAMARATHBEN M. CHOKSHI v. STATE reported in 1994 (1) 35 (1) Gujarat Law Reporter at page 203. It has been clearly held therein that the proceeding beyond the stage of section 10 (1) of the Ceiling Act could not be undertaken when an application for exemption under section 20 (1) thereof or for a permission under section 21 (1) thereof is pending. I am therefore of the opinion that the aforesaid notification and the notice at Annexures B-2 and B-3 respectively cannot be sustained in law. They have to be quashed and set aside.

6. As aforesaid, the fate of the application under section 21 (1) of the Ceiling Act is pending in appeal before respondent No.2 by means of Appeal No. Ahmedabad-100 of 1995. It would be in the fitness of things to await the decision in the aforesaid appeal before the final decision with respect to the declaration under section 6 (1) of the Ceiling Act is taken by respondent No.3 in the light of this judgment of mine.

7. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure-B to this petition as affirmed in appeal by the appellate order at Annexure-A to this petition deserves to be quashed and set aside. The notification and the notice at Annexures B-2 and B-3 to this petition also deserve to be quashed and set aside. The matter deserves to be remanded to respondent No.3 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine.

8. It is the case of the petitioners that the area of the disputed land has come to be reduced to 5030 square metres on implementation of Town Planning Scheme No.5 for that area. Respondent No.3 may take that fact into consideration for the purpose of deciding the proceeding arising from the declaration under section 6 (1) of the Ceiling Act after remand pursuant to this judgment of mine.

9. In the result, this petition is accepted. The order passed by the Competent Authority at Ahmedabad (respondent No.3 herein) on 28th February 1984 at Annexure-B to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 23rd December 1988 in Appeal No.Ahmedabad-1381 of 1984 at Annexure-A to this petition is quashed and set aside. The notification and the notice at Annexures B-2 and B-3 are also quashed and set aside. The matter is remanded to respondent No.3 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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